

MONTANA LEGISLATIVE HISTORY

Chapter 142 19 95

Bill H _____ S 22

Original bill & history X c

H. Committee on BUSINESS & LABOR

S. Committee on BUSINESS & INDUSTRY

Hearing Date(s) 3/3 X c

Hearing Date(s) 2/2 X c

EXECUTIVE 3/7 X c
ACTION _____ c

EXECUTIVE 2/3 X c
ACTION _____ c

Date Out _____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

2/03 SIGNED BY GOVERNOR
CHAPTER NUMBER 26
EFFECTIVE DATE: 02/02/95

SB 22 INTRODUCED BY GAGE

PROVIDE LIMITED EXEMPTION FROM WORKERS' COMPENSATION
COVERAGE FOR JOCKEY WHO IS LICENSED BY BOARD OF
HORSERACING

BY REQUEST OF THE DEPARTMENT OF COMMERCE

12/15	INTRODUCED		
12/23	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO BUSINESS & INDUSTRY		
1/05	FISCAL NOTE RECEIVED		
1/06	FISCAL NOTE PRINTED		
2/02	HEARING		
2/03	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	2ND READING PASSED	43	2
2/06	3RD READING PASSED	40	4
	TRANSMITTED TO HOUSE		
2/07	FIRST READING		
2/15	REFERRED TO BUSINESS & LABOR		
3/03	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	100	0
3/09	3RD READING CONCURRED	97	1
	RETURNED TO SENATE		
3/11	SIGNED BY PRESIDENT		
3/11	SIGNED BY SPEAKER		
3/13	TRANSMITTED TO GOVERNOR		
3/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 142		
	EFFECTIVE DATE: 03/15/95		

SB 23 INTRODUCED BY HARP

PROHIBIT MUNICIPALITIES FROM USING IMPROVEMENT DISTRICT
FINANCING FOR COST OF EXTENSION OF SERVICES OR CAPITAL
IMPROVEMENTS IN AN AREA TO BE ANNEXED

12/19	INTRODUCED
1/02	FISCAL NOTE REQUESTED
1/02	FIRST READING
1/02	REFERRED TO LOCAL GOVERNMENT
1/06	FISCAL NOTE RECEIVED
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE

SB 24 INTRODUCED BY SWYSGOOD

REVISE LAWS GOVERNING VOTER INFORMATION PAMPHLETS TO
REQUIRE VOTER INFORMATION PAMPHLET BE SENT WITH CERTAIN
ABSENTEE BALLOTS IF THERE IS STATEWIDE BALLOT ISSUE ON
BALLOT

12/22	INTRODUCED
12/23	FISCAL NOTE REQUESTED
1/02	FIRST READING
1/02	REFERRED TO STATE ADMINISTRATION
1/06	FISCAL NOTE RECEIVED
1/06	FISCAL NOTE PRINTED

SENATE BILL NO. 22

INTRODUCED BY GAGE

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM WORKERS' COMPENSATION COVERAGE A JOCKEY OR PONY RIDER WHO IS LICENSED BY THE BOARD OF HORSERACING; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);
- (e) employment of a broker or salesman performing under a license issued by the board of realty regulation;
- (f) employment of a direct seller engaged in the sale of consumer products, primarily in the

1 customer's home;

2 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
3 under the laws of the United States;

4 (h) employment of any person performing services in return for aid or sustenance only, except
5 employment of a volunteer under 67-2-105;

6 (i) employment with any railroad engaged in interstate commerce, except that railroad construction
7 work is included in and subject to the provisions of this chapter;

8 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
9 event, unless the person is otherwise employed by a school district;

10 (k) any person performing services as a newspaper carrier or free-lance correspondent if the person
11 performing the services or a parent or guardian of the person performing the services in the case of a minor
12 has acknowledged in writing that the person performing the services and the services are not covered. As
13 used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for
14 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

15 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
16 bundles; but

17 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
18 carries or delivers papers.

19 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

20 (m) a person who is employed by an enrolled tribal member who operates solely within the exterior
21 boundaries of an Indian reservation;

22 (n) employment of a jockey or pony rider performing under a license issued by the board of
23 horseracing.

24 (3) (a) A sole proprietor or a working member of a partnership who represents to the public that
25 the person is an independent contractor shall elect to be bound personally and individually by the provisions
26 of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers'
27 Compensation Act.

28 (b) The application must be made in accordance with the rules adopted by the department. The
29 department may deny the application only if it determines that the applicant is not an independent
30 contractor.

1 (c) When an application is approved by the department, it is conclusive as to the status of an
2 independent contractor and precludes the applicant from obtaining benefits under this chapter.

3 (d) When an election of an exemption is approved by the department, the election remains effective
4 and the independent contractor retains the status as an independent contractor until the independent
5 contractor notifies the department of any change in status and provides a description of present work
6 status.

7 (e) If the department denies the application for exemption, the applicant may contest the denial by
8 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
9 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
10 the procedure established in 39-51-2403 and 39-51-2404.

11 (4) (a) A private corporation shall provide coverage for its officers and other employees under the
12 provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules the department promulgates
13 and subject in all cases to approval by the department, an officer of a private corporation may elect not to
14 be bound as an employee under this chapter by giving a written notice, on a form provided by the
15 department, served in the following manner:

16 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
17 delivering the notice to the board of directors of the employer and to the department; or

18 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
19 delivering the notice to the board of directors of the employer, to the department, and to the insurer.

20 (b) If the employer changes plans or insurers, the officer's previous election is not effective and
21 the officer shall again serve notice as provided if the officer elects not to be bound.

22 (c) The appointment or election of an employee as an officer of a corporation for the purpose of
23 excluding the employee from coverage under this chapter does not entitle the officer to elect not to be
24 bound as an employee under this chapter. In any case, the officer shall sign the notice required by
25 subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202
26 if the officer falsifies the notice.

27 (5) Each employer shall post a sign in the workplace at the locations where notices to employees
28 are normally posted, informing employees about the employer's current provision of workers' compensation
29 insurance. A workplace is any location where an employee performs any work-related act in the course of
30 employment, regardless of whether the location is temporary or permanent, and includes the place of

1 business or property of a third person while the employer has access to or control over the place of
2 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
3 The sign must be provided by the department, distributed through insurers or directly by the department,
4 and posted by employers in accordance with rules adopted by the department. An employer who purposely
5 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

6
7 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

8 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0022, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to exempt from workers' compensation coverage a jockey or pony rider who is licensed by the board of horse racing.

ASSUMPTIONS:

1. All jockeys and pony riders would be exempt from the workers' compensation act. However, SB22 would not prevent jockeys or pony riders from re-entering the workers' compensation system as a sole proprietor, partner, or corporate officer who elects coverage for themselves or as an exempt employee who is endorsed on to an employers policy.
2. The extent to which coverage would be reduced for jockeys or pony riders performing under a license issued by the Board of Horse Racing is unknown.
3. The State Fund's loss to premium ratio for jockeys or pony riders performing under a license issued by the Board of Horse Racing is highly volatile and is therefore inestimable in the short term. In the long term, premiums are presumed to be established at levels consistent with losses. The State Funds' experience to date is as follows:

Summary of Industry Premium and Loss Experience (Horse Racing Association)

Policy Period	Premium	Total Industry Ultimate Loss Estimate	Jockey in Races Ultimate Loss Estimate
1/94-10/94	\$267,894	\$229,603	\$184,954
1/93-1/94	\$75,790	\$2,961,456	\$2,842,763
1/92-1/93	\$164,440	\$460,138	\$25,764
1/91-1/92	\$160,480	\$364,761	\$75,014
1/90-1/91	<u>\$186,870</u>	<u>\$307,754</u>	<u>\$134,591</u>
Total	\$855,474	\$4,323,712	\$3,263,086

Notes:

- 1) 1/90-1/91 year - Information on specific accidents does not allow identification of claims during races.
- 2) 1/94-10/94 year - 2 claims believed to be race related, but unclear.
- 3) Loss data updated for most recent loss information (Dec. 1994).
- 4) Ultimate loss estimates are not discounted.
- 5) Incurred Losses as of December 15, 1994.

FISCAL IMPACT:

SB22 would likely result in a reduction in both premium revenue and loss expenditures for the State Fund. The net effect on the State Fund is inestimable in the short term.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The long-range net impact of SB22 on the State Fund is presumed to be generally neutral. A reduction in the State Fund's "book of business" generally causes overhead expenses to be allocated to a smaller base, putting upward pressure on premiums--all other factors being constant. However, this impact of SB22 would be relatively insignificant.

Dave Lewis 1-5-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Delwyn Gage 1-6-95
DELWYN GAGE, PRIMARY SPONSOR DATE

Fiscal Note for SB0022, as introduced

SB 22 7

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 2, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 242, SB 19, SB 22
Executive Action: None

HEARING ON SB 242

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, Cutbank, related his concern about horseracing, and particularly the Horseracing Board. Studying boards of various professions in the State of Montana, he found all of them had people from their profession on their boards. The Livestock Board not only has livestock people on their board, they also suggest to the Governor people to appoint to the board. This is the ultimate in independence and control. He stated the changes to be proposed will not do that. On page 1, lines 14, 15, 16, it says: no person holding a financial interest in the race track or race meet, member of a county fair board or owner, trainer, or breeder of a race horse is eligible for membership on

Closing by Sponsor:

SEN. GAGE addressed whether or not this is expansion of gambling. How many different games have the lottery people introduced in the State of Montana. They bring in a new thing when they believe their customers are getting bored with an old game. Is that considered expansion of gambling in the State of Montana? If it isn't, then neither should this be.

HEARING ON SB 22Opening Statement by Sponsor:

SEN. GAGE, SD 43, Cutbank, explained that SB 22 is an act exempting from Workers' Compensation coverage, a jockey or pony rider who is licensed by the Board of Horseracing. These are persons who are pretty much on their own. In some areas they have agents that go with them to line up their riding. He said, all of them, to his knowledge, file a schedule C tax return, which indicates a sole proprietorship as opposed to an employee.

Proponents' Testimony:

Sam Murfitt, Executive Secretary, Montana Board of Horse Racing, read his written testimony, EXHIBIT 14.

Bill Brown, MHBA and HBPA, owner and trainer from Butte, stated the passage of this bill is essential to small owners and trainers in the State of Montana. Jockeys are self-employed.

Burton Farley, Vice President, HBPA, added the HBPA is in favor of this bill.

Opponents' Testimony: None.Informational Testimony: None.

{Tape: 2; Side: A}

Questions From Committee Members and Responses:

SEN. WILSON questioned Mr. Murfitt who replied to SEN. WILSON that in the packet of information there are copies of national publications which have a national subscription. There are articles on Montana and the legislation which is going to exempt jockeys. We have minutes of our meetings sent to regional representatives of jockeys. He received a call recently which he thought might concern Workers' Compensation. Instead, he was asked how many days of racing will we have in Montana this year. Apparently, they aren't too concerned about the bill. As far as the riders being a transient population, yes, that is true of most. As he stated in his testimony, approximately 60% are non-resident. They come to Montana. Depending on where they are,

for example, they may arrive in Hamilton from Washington and run two races and return. They might come to Great Falls, ride in one race and return to where they came from. Some may follow the whole circuit in Montana and as soon as it is over they go to another state. **SEN. WILSON** stated that he felt that if this hearing were held in June, we would probably have some opponent testimony.

SEN. CRISMORE asked **Mr. Murfitt** if the jockeys are still covered; if the bill just moves them to a private insurance coverage. **Mr. Murfitt** stated that was correct; we will be treating them the same way as all other states do, with the exception of the 5 states previously mentioned. **Mr. Murfitt** stated that **SEN. GAGE** has some amendments to offer. A jockey can not ride in Montana unless he/she is properly licensed. When they come to get their jockey license, they will be required to sign a statement notifying them they are not covered under Worker's Compensation. When the racing association comes in for their license, we will not issue a license unless they bring the proof that they have the proper insurance.

SEN. FORRESTER asked **Chuck Hunter, Department of Labor and Industry**, what is to stop this jockey from saying that he was coerced into signing the piece of paper and claiming to be an employee. **Mr. Hunter** replied there is nothing to prevent that from happening. The fact that it is done with the licensure, there would be some weight given to the fact that the jockey voluntarily sought the license.

SEN. FORRESTER asked **Sam Murfitt** how much it was going to cost to set up this licensure process. **Mr. Murfitt** replied that it would be the same licensing process that we have right now. We would just amend the application to include the notification of no Workers Compensation coverage. The race track already carries catastrophic injury insurance and jockeys will be covered under that.

SEN. EMERSON asked **Mr. Hunter** whether that meant we could do the same for other fields. **Mr. Hunter** replied that the legislators have the authority to decide which employees, which workers, are covered by the Workers Compensation act and which are not.

Closing by Sponsor:

SEN. GAGE on page 1, line 19, 20 and 21, said...unless the owner elects to carry coverage. Some owners may elect to do so as leverage to get a jockey to choose to ride his horse. This bill does not preclude the owner from doing this. The amendment comes as a result of the Department of Commerce and Workers' Compensation Divisions working together on this bill. I would like to talk to some people in the racing industry before I offer the amendment.

Testimony presented to the Senate Business and Industry Committee by Sam Murfitt, Executive Secretary of the Montana Board of Horse Racing.

*Presented by
Sam Murfitt*

Good morning. My name is Sam Murfitt, I am the Executive Secretary of the Montana Board of Horse Racing and I am appearing before this committee as a proponent of Senate Bill 22. In fact SB22 was proposed by the Board of Horse Racing through the Department of Commerce on behalf of the Horse Racing Industry in Montana.

SB 22 proposes to exempt Jockeys from workers compensation benefits during races as their claim to employee status is without merit during this period. Of 31 horse racing jurisdictions in the United States only six consider Jockeys to be employees and therefore eligible for workers compensation benefits. These states are: New York, New Jersey, Maryland, California, Colorado and Montana. At the present time Colorado in its legislature has legislation similar to this which would exempt jockeys from coverage also. These other 4 states are what one would consider to be "major league" in the world of horse racing. Between these state an estimated several thousand race days are contested. Purses (the amounts horses are racing to earn) are extremely high and the number of participants (owner/trainer, etc.) is very large. Large indeed when compared to horse racing in Montana where a total of 70 to 80 days of racing are held annually; where purses hover in the \$600 range,

and not in the \$15,000 to \$20,000 range as they do in these other workers compensation states.

The other 25 racing jurisdiction (states) do not classify jockeys as employees. In these other racing non-workers compensation states, jockeys are insured by the race tracks through purchase of catastrophic insurance policies, medical accident policies and also through the Jockeys Guild which is basically a union for jockeys.

When Montana began enforcing its requirement that jockeys were employees, participation in racing by Montanans and non-residents dropped approximately 40%. Wyoming, Idaho, Washington, Oregon, North Dakota and South Dakota do not consider them to be employees and horsemen coming to Montana were given two choices - buy coverage or stay home. Many chose to stay home or quit the business.

SB 22 will rectify the misclassification of Jockeys riding during races as being employees. Employees of who? The owners, the trainers? It is interesting to note at this time that in filing income tax jockeys list themselves as self employed. Also, approximately 60% of the jockeys riding in Montana are non-residents. At this time I would like to explain how a jockeys services are obtained, to better help this committee understand the strange relationship that exists. An individual has a horse he or she wants to enter in a specific race on a specific day.

12

On entry day for this race, the trainer fills out an entry blank and deposits in the race office. On this entry blank are such details such as horses name, age, sex, what race it is entering and the name of the jockey that the trainer desires to ride his horse. At closing of entries, the race office compiles a list of entrants for that race - this is known as the draw. During the draw often times the Jockeys which you want to ride your horse is also named to ride another or several other horses in that same race. At this time the Jockey or his/her agent (yes, agent) decides which horse the Jockeys will ride. Generally speaking this choice will be the one which the Jockey or his agent feels he or she has the best chance to win on. So it is highly possible that you will not have the jockey who you named to ride your horse, ride it and you then have to persuade another Jockey to ride. The Jockey or his/her agent is solely the determinant of whose horse he/she will ride. The Owner or trainer only lists a name.

If successful or when finally securing the service of a jockey, the owner or trainer has no control whatsoever over the jockey or horse once the race begins. The jockey provides his own riding gear, saddle, goggles, helmet, whip and expertise.

I previously mentioned jockey agents. Many jockeys themselves employ agents to act on their behalf in deciding which horses to ride. In this situation, the owners or trainer doesn't even see the jockey instead they see his/her agent. Employee status, I

don't think so.

In any event having jockey properly classified as exempt will not leave them out in the cold. Montana will cover them the same way as the other 25 states. Racing associations will be required to purchase a medical accident policy covering jockeys during races. This will be insured by the Board of Horse Racing not issuing an association racing licenses until proof of purchase of such a policy is shown. Secondly, the jockey will be covered under the National Jockeys Guild policy if they so choose.

An added bonus will also be realized by exempting jockeys from Workers Compensation benefits by the State Fund, other industry insureds and the horse racing industry itself. Jockeys constitute the heart of the liability issue. Using 1993 as an example State Fund estimates a liability for the horse racing industry to be \$2,693,035. If one subtracts from this amount the monies spent on jockey injuries during races, the new estimated liability for the industry would be somewhere in the \$150,000 range. Obviously the horse racing industry does not generate a 2 mill annual premium. Where does the extra come from? It comes from all the other industries insured by State Fund. With jockeys being properly classified as exempt the Montana Industries insured (which includes horse racing) will not have to pick up the slack. Their rates will not increase as a result and the horse racing industry should be able to enjoy affordable coverage once again, therefore increasing participation.

EXHIBIT 14
DATE 2-2-95
SB 22

In closing, I would like to say that the Montana Horse Racing Industry is simply asking this body for the ability to play on a level playing field and to be competitive with other states offering horse racing. Jockeys are not employees of owners and trainers never have and never will be. As a group they constitute the most independent of free spirits. Horsemen are basically at their mercy from a stand point of if they will ride their horse; if they will do their best once the starting gate opens; or even if they will show up to ride once they have consented. You've got to have them, they've got to have you, you can't hire them or fire them. The only thing for certain at this time is that the industry must insure them. I encourage this committee to act favorably on SB22.

DATE

2-2-95

SB 22

Letters

(continued from page 6422)

about local horse racing news. All horsemen need to be involved in media relations.

Dr. Gerald Farris
Longview, Texas

JOCKEYS: LET THE RICH PAY FOR THE POOR

This is not an easy task, and I don't relish it. I know a lot of jockeys and greatly respect them, their ability and athleticism. I understand the risks they take when riding, and I have great compassion for those injured in their chosen line of work. But there are some things that have to be said, and I haven't seen anyone tell it like it really is...yet!

New York racing is being choked to a slow death and everyone is chipping in, attempting to save the sinking ship—everyone EXCEPT the jockeys. The New York Racing Association is downsizing, the owner's ranks are thinning because virtually all of us lose money (over 90% to the tune of around \$80 million a year in New York alone). The breeders' ranks have been halved due to bankruptcy and the trainers, some of whom work 12 hours a day, seven days a week, are barely making a living. All of us are struggling and yet there is only one group which only takes.

In New York, one of the only state to have this inane law, the owners pay the jockeys' workers' compensation insurance because the jockeys are considered to be our employees—which is really a laugh.

How did this happen? I've heard that late in a legislative session, the jockeys' lobbyist in Albany rammed through this insane, unreal, unreasonable, and totally ludicrous law. This was done in secret without the trainers or owners having the slightest clue, probably because the jockeys knew it was morally and ethically wrong and would have been disputed.

Everyone, especially an owner, knows that jockeys are INDEPENDENT CONTRACTORS and not employees of the owner. Yet each owner contributes a basic fee, about \$400, plus 1% of the entire purse structure in the state of New York comes off our accounts to pay the jockeys' workers' compensation insurance.

One trainer I know contributed around

\$9,000 last year to the fund.

This money leaves the game, never to be churned back by the owners in new horses. This reduces the supply of money, demand, and prices.

And now for the killer: Jockeys' Guild manager John Giovanni recently said in interviews that jockeys are INDEPENDENT CONTRACTORS. There's no argument about that. So why are they our employees in New York? And why are the owners paying their workers' compensation insurance? What have the jockeys done to help alleviate the desperate situation here and around the country where it is estimated that the owners lose about \$1 billion a year?

In most states, the jockeys are considered independent contractors. Hey, I'm an independent small businessman, jockey agents are small businessmen, independent contractors. Guess what? No one pays my health insurance for me, and no one pays health insurance for jockey agents or millions of other independent contractors. Why do the jockeys want someone else to pay for their insurance?

Ironically, the most vociferous voices in support of others paying their way are the most successful and I assume the most wealthy jockeys. I don't hear much from the journeyman jocks who toil daily at their arduous task and earn very little compensation for it.

That brings me to my most important point, a possible solution to the threatened jockey strike. The main leadership will think I'm nuts and the idea is ridiculous, but think about it: Just don't dismiss it out of hand.

In all facets of our lives in virtually every endeavor, those who are blessed with more ability and have the most earning power have helped the less fortunate. Wouldn't it be an appropriate gesture if the New York and California millionaire riders could help their comrades toiling at Grade C half-milers, putting their lives on the line hundreds of times a year for peanut wages?

It would have been a magnanimous gesture if the jockeys on Breeders' Cup Day, while donning their "47" caps, had said, "I just made \$60,000 in a little over a minute, and I'm going to give 1% or \$600, or .50% or \$300, to an insurance fund for jockeys who are less fortunate than me." I think half the viewing public would have fallen off their collective seats.

So, my proposal to end this jockey stalemate and to finally have the jockeys contribute to our dying game is this: Let all jockeys who get their 10% (most

THE PRICE OF A SONG

SEATTLE SONG,
The *BEST* Value
Among Sons of
Seattle Slew

\$61,823
Average Earnings
Per Starter,
over 12x fee

\$39,108
Lifetime Yearling
Average, over 7x fee

SEATTLE SONG
Seattle Slew - Incantation,
by Prince Blessed
1995 Fee: \$5,000 live foal



DOMINO STUD

Mr. and Mrs. Kenneth Jones Jr., Owners

Imports to Pat Terry or Joseph Alexander
P.O. Box 11763 Russell Cave Pike
Lexington, KY 40527-1763
(502) 297-1436

SEATTLE SONG TILT UP

owners pay them 10% across the board from all stakes races worth \$50,000 or more contribute .50% or 1% to their insurance fund. The wealthier would be offsetting expenses for the poorer jockeys and before the wealthy ones start screaming, let them remember they're paying about 50% in taxes anyway, so it will cost them only half. Then the jockeys could join in with the rest of us supporting the game we love and we all support.

Isn't it the "American way" for the more fortunate to help those less fortunate?

Giovanni has said that jockeys "are the only people in racing who do not receive benefits out of purses or out of hand." That, of course, is ludicrous. And then he continues by berating the small amount of money given backstretch personnel out of purses. Some jockeys live in million-dollar homes while backstretch people live in third-world hovels and Giovanni is harping on the small benefits they receive. The man has to get his priorities straight.

This letter is being written out of love for the game and respect for the jockeys, not contempt, and a desire for the rank and file to hear some differing opinions, other than those of their leaders who

keep insisting that they're "independent contractors," yet are willing to be "employees" at times. They want it both ways.

*Richard Bronze
Lawrence, N.Y.*

"The Final Turn" column of Dec. 10 (page 6182) by Ronald K. Kirk of the Thoroughbred Owners and Breeders Association was right on target. Mr. Kirk and TOBA should be applauded by horse owners everywhere for having the courage to bluntly state what almost everyone in the industry knows: Jockeys in the past and today continue to play both sides of the fence. Wanting the freedom of independent contractors, they insist on being regarded as employees when it comes time to pay for insurance coverage and other benefits.

As Mr. Kirk states, jockeys do indeed receive a much larger share of racing's limited revenues than they are entitled to. When owners and racetracks are losing money every year and backstretch personnel work for limited wages under difficult working conditions, jockeys should consider themselves exceptionally fortunate to receive as much for a one-minute ride as a trainer who invests

many hours per week on the care of the horse.

Yes, it is a demanding and dangerous profession, but nobody forces any jockey to undertake the risks involved. The cynical and shameful grab for media attention during the Breeders' Cup by wealthy jockeys racing for \$1-million purses which they refuse to share with their less successful brethren, while asking the rest of the industry to foot the bill, was a disgrace.

If the Jockeys' Guild is really interested in helping injured riders, I would respectfully suggest that the winning riders in races with purses of \$50,000 or more contribute one-half of their winnings to a medical/retirement fund for the benefit of all jockeys.

Frankly, there is no reason for a rider to earn the same percentage of a \$1-million purse as they do of a \$5,000 purse, except outmoded tradition from 100 years ago, when there were no million dollar purses. Perhaps it's time for owners to start employing jockeys who will ride for more reasonable rates and take responsibility for their own benefits as all other independent contractors do.

*H. R. Levinsky
Forestville, Calif.*

Obituary

JACK DEMPSEY

Jack Dempsey, who managed prominent California Thoroughbred farms for more than 54 years, died on Dec. 15 at his residence in Los Alamos, Calif. He was 69.

Born in Ireland in 1925, Dempsey began his career with the Bert Kerr Bloodstock Agency. After seven years with Kerr, Dempsey rode and assisted English trainers before relocating to Canada, where he worked for W. R. Conklin for three years.

Dempsey traded cold Canadian air for the sunny clime of Southern California in 1957, when he became associated with Dr. Jack Robbins' Concho Ranch. He later managed Silver Creek Ranch before helping Fletcher Jones establish Westerly Stud Farm, which grew from its initial 40 acres to eventually encompass 4,000 acres. Among the leading California stallions standing at Westerly during the period was Promised Land.

Dempsey also managed Fred Sahadi's Cardiff Stud Farm during the tenure of Gummojas California's leading sire.

In the 1970s, Dempsey purchased 20 acres and established his own Longview Stud. The farm was relocated to Solvang in the 1980s to a 128-acre tract, but Dempsey retained his original acreage, where he kept yearlings. Longview raised more than 20 stakes winners since being started by Dempsey, who also operated a bloodstock agency.

Dempsey is survived by his widow, Helen, and a daughter, Marianne, who manages Longview.

MRS. HUMPHREY S. FINNEY

Mrs. Humphrey S. Finney, 83, widow of the late Fasig-Tipton Company chairman, died at her residence near Versailles, Ky., on Dec. 21. A Maryland native, Olive Macey married Humphrey Finney in 1930. The couple initially resided in Maryland, where Humphrey Finney joined Fasig-Tipton as an announcer in 1937, and moved to New York in 1953 after a group led by Finney purchased the company.

The Finneys relocated to Kentucky in 1962. During Humphrey Finney's career, his wife accompanied him on trips to Europe, Australasia, and the Far East. Humphrey Finney died in 1984. The Fasig-Tipton sale pavilion at Saratoga bears Humphrey Finney's name. John M. S. Finney, the couple's son, became Fasig-Tipton president and chief executive officer in 1968. The younger Finney died on June 1 of this year.

Mrs. Finney is survived by daughters Pat and Marge and eight grandchildren. Contributions are suggested to the memorial fund at St. Raphael's Episcopal Church in Lexington, where services for Mrs. Finney were scheduled to be held on Dec. 27, or to the National Wildlife Federation in Washington, D.C.

By Ron Mitchell

Jockeys are independent contractors

As such, jockeys should be responsible for their own insurance in an industry whose revenue is declining

by J. Brian McGrath

THE negotiations between the Thoroughbred Racing Associations (TRA) and the Jockeys' Guild have been difficult, as we are dealing with complex and emotional issues which do not lend themselves to easy solutions. At the crux of the situation are the elements of compensation, coverage, and financial wherewithal.

The threshold questions are three-fold: 1) Are the jockeys fairly compensated for their participation in racing? 2) Do racetracks have a responsibility as it relates to accident coverage? 3) Do racetracks have a responsibility in the areas of health and welfare benefits? Each of these must be viewed in the context of the poor financial condition facing racetracks, other industry groups, and our sport overall.

As to the first, we believe that the jockeys receive fair and just compensation. Total payments to jockeys as their share of purses approximate \$60-million, of which \$33-million is derived from simulcasting. Payments made to cover insurance and health benefits by racetracks totaling \$6,244,000 and those made by horsemen in workers' compensation states amounting to \$4.6-million bring the total to nearly \$71-million.

Racetracks across America are operating on paper-slim profit margins at best, and many are experiencing losses. While simulcast revenues have increased, on-track attendance

and total handle have declined over the past three years. Several racetracks have closed, gone bankrupt, or reorganized. From the horsemen's perspective, the Thoroughbred Owners and Breeders Association (TOBA) pointed out at this year's Jockey Club Round Table that horse owners are losing more than \$1-billion annually. In this economic environment, one cannot justify paying jockeys an increased share of a declining business. Their entitlement or need is not greater than the other participants in our industry.

In the area of accident coverage, we do feel a responsibility and have and will continue to address this issue. We have offered to increase accident coverage by 25% and have undertaken an industry-wide study to determine if a national accident plan for both workers' compensation and non-workers' compensation states is feasible and cost-effective. The Guild has argued that our offer is grossly

If anything, the value of media rights over the past several years to this industry has decreased, not increased.

inadequate. This view was expressed without regard to current economic circumstances and recognition that racetracks and other facets of the industry are today reducing coverage for their employees or asking for additional employee participation. It should also be pointed out that, while accident benefits have not increased over the years, this is a direct result of the Guild's preference to channel what is now a \$1.7-million payment from the racetracks to fund its health plan, rather than improved accident coverage.

As to health and welfare benefits, it should be clearly stated that the jockeys are independent contractors. This status brings with it not only opportunities, but also responsibilities. As independent contractors, jockeys are able to offer their professional services to a broad cross section of owners and trainers. At the same time, they are free to establish self-funded benefit accounts and are responsible for funding their own health and welfare plans.

The Guild has argued that payments made by the TRA in this area are in exchange for media rights. Our view is that the jockeys are paid for their participation through purses. Our sport does not generate significant value from its media rights. Today, with the exception of the Triple Crown and the Breeders' Cup, access to broadcast television is achieved by buying time, not in exchange for license fees. If anything, the value of media rights

over the past several years to this industry has decreased, not increased.

In putting forth its case, the Guild has argued that an additional one-tenth of 1% be added to the handle for the benefit of jockeys and that the public would not find this objectionable. Importantly, in dollar terms, we are talking about something approximating \$10-million. Why should the patron be taxed for the benefit of the jockeys? If the customer will not mind, then why not take out additional pieces for other industry groups? It is contrary to well-accepted business principles that the way to increase revenues in a declining business is to raise your price. The jockeys argue that they just feel they deserve more. We do not agree.

The jockeys' contribution to racing is considerable, as is that of all industry groups. As pointed out, racing is facing very difficult financial times and the solution lies in developing ways to increase the overall revenues within the sport. If that development is successful, everyone will benefit.

A strike or boycott would be to the detriment of the sport and all participants. ☺

J. Brian McGrath is commissioner of the Thoroughbred Racing Associations, Inc.



POINT/COUNTERPOINT
JOCKEY STRIKE

DATE February 2, 1995

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: Senate Bills 19-22-242

Senator Delwyn Page

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Rosemary Yoke	H B P A	242		X
Albert Yoke	H B P A	242		X
Maxine Peterson	H B P A	242	X	
Ralph Peterson	H B P A	242	X	
Burton Farley	Vice Pres HBPA	242	X	
Burton Farley	" "	19	X	
Burton Farley	" "	22	X	
William Shumate	Self-Clara	22-19-242	X	
Wayne Allen	Owen	242-19	X	
MAXINE PETERSON	H B P A	22	X	
"	"	19	X	
Ralph Peterson	"	22	X	
"	"	19	X	
Rosemary Yoke	H B P A	19	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 2, 1995

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: Senate Bills 19-22-242

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Rosemary Gabe	H.B.P.A.	22	X	
Albert Gabe	H.B.P.A.	19	X	
Albert Gabe	H.B.P.A.	22	X	
Bud SCRIBNER	H B P A	242	X	
"	"	22	X	
"	"	19	X	
Joyce Beel	H B P A Horse Breeders	242	X	
Charles R. Brooks	Yellowstone County		X	
Low Wojciechowski	Mt. Bd Horse Racing	242		X
JAM MURPHY	MBO HR	22	X	
Jim Scott	M B H R	242		X
PEGGY BUFFINGTON	Self	242		X
Tom Tucker	MONTANA Simulcast	19	X	
LAY CLARK	MARIAS FAIR	19/22	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 2 1995
 SENATE COMMITTEE ON Business & Industry
 BILLS BEING HEARD TODAY Senate Bill 19-22-242
Senator D. Gage

< ■ >

PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Bill Ogg	Mt State Fair	19/22	X	
Cheryl Altom	HBPA - MHBA	242	X	
Tollen Dennis	Self as owner	all	X	
Dave Dennis	Self as owner/trainer	19-22 242	X	
Don Banta	MHBA	11	X	
DALE MAHLUM	MHBA	242 19	X	
John DeBruin	MHBA	242 19	X	
JOE W. ERICKSON	MHBA	19-22 242	X	
BILL BROWN	MHBA HBPA	19-22-242	X	
Inget Veidt	NWATT FAIR	19/22	X	
SAM KENOSIAK	MISSOULA, MT WESTERN MONT. FAIR	19/22	X	
GARY Koepplin	Rowell County Fair	19-22	X	
11	11	242		X
Don L Hall	MHBA	19-22 242	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 2, 1995

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: SB 19-22-242

Senator Page

Name	Representing	Bill No.	Check One	
			Support	Oppose
<u>BJ Holmes</u>	<u>Gold Butte Helena</u>	<u>19</u>	<u>X</u>	
<u>Bill Mooney</u>	<u>West. Mt. Fair-Mont</u>	<u>19 22</u>	<u>X</u>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 2, 1995

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: SB 19-22-~~22~~ 242

Senator GAGE

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Lori Stewart	MABA	242	X	
Bill Nooney	Western Int. Fair Trade	19	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 3, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 246, SB 216, SB 228
Executive Action: SB 22 DO PASS AS AMENDED
SB 170 DO PASS

HEARING ON SB 246

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Missoula, explained he would like the committee to consider a possible change to the search and seizure chapter of the criminal procedures title. Specifically, he was attempting to enhance the due process protection of business people who were in the business of pawn brokerages. Under current law a business person who operated a pawnbroker business did not have the due process protection that one would normally assume a business person would have. They talked about a pawnbroker, who, in good faith, bought a piece of property that had been stolen. Until two years ago the pawnbroker and his

SEN. SPRAGUE exclaimed that free enterprise had to be free enterprise. It couldn't be almost free. He wished to open it up as much as possible and said most people were not afraid of competition. There had been a breaking down of borders and barriers, both statewide and nationally. Whether that was good or not, it was competition.

SEN. FORRESTER voiced his opposition to the bill. He said there were many areas where bidder preference was used in federal contracts of minority status. Those who wanted that bill, such as the electrical supply companies in Billings, were evidently doing quite well with their businesses as they were. He disliked the reciprocity clause in the bill because he believed it did no good. He understood the free enterprise fervor which swept the nation. He opposed **SEN. SPRAGUE'S** move to do away with milk control which protected the local producers while the bill protected Montana people.

SEN. KLAMPE remarked the fiscal note for the bill was ridiculous.

Vote: **SEN. MILLER'S** motion that SB 170 DO PASS CARRIED 6-3 on roll call vote #1, with **SENATORS FORRESTER, KLAMPE, AND WILSON** voting "NO".

EXECUTIVE ACTION ON SB 22

Discussion: **Bart Campbell** stated **SEN. GAGE** approved the amendments, **EXHIBIT #4**. The thrust of the amendments defined the situation when a jockey was not covered by Workers' Compensation. Numbers 1 and 2 changed the title to reflect the amendments. Page 2, line 23, created a time period in which a jockey was not covered and also addressed the acknowledgement a jockey signed indicating he\she was not covered.

Motion: **SEN. BENEDICT** MADE THE MOTION THAT THE AMENDMENTS BE ADOPTED, SB002201.ABC.

Discussion: **SEN. CRISMORE** stated this amendment addressed his concerns regarding the bill.

Vote: The motion to ADOPT THE AMENDMENTS CARRIED UNANIMOUSLY by voice vote.

Motion: **SEN. CRISMORE** MOVED THAT SB 22 DO PASS AS AMENDED.

Discussion: **SEN. WILSON** explained what happened to those jockeys. The bill was trading a cadillac of an insurance policy into a volkswagen. Jockeys wouldn't be covered to the extent they were now. He thought that wasn't a very good bill for them. He opposed the bill.

SEN. BENEDICT claimed, having been involved in Workers' Compensation for a long time, **SEN. WILSON** was exactly right. The

jockeys would not have the same kind of coverage as when they worked as an employee for a trainer. However, that coverage support for the jockeys reached to the point where it became too expensive to cover the jockeys they used in the sport of horse racing in Montana if they didn't do something. The jockeys understood that this was a business and if they wanted to remain in it, they had to comply. It was something that had to be done.

SEN. CRISMORE stated he agreed with both **SEN. WILSON** and **SEN. BENEDICT**. The bill was needed.

SEN. EMERSON stated the horse owner didn't choose the jockey who rode his horse. The owner should not be required to cover that jockey if the jockey may or may not have had a preexisting condition.

Vote: The motion SB 22 DO PASS AS AMENDED CARRIED 7-2 with **SEN. WILSON** and **SEN. FORRESTER** voting "NO".

HEARING ON SB 228

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, Missoula, said SB 228 was a proposal that amended the law with respect to the rights and duties of partners in the State of Montana, so that one partner, who did not have a majority interest in a partnership, would not have the ability to cancel an insurance policy which had been issued to the partnership, without obtaining the consent of the majority of the partners of a particular business. The bill was initiated on his behalf because of a constituent, **Jerry Marble**. **Mr. Marble** disputed with a co-partner who cancelled an insurance policy which had been issued to the partnership. When **Mr. Marble** submitted a claim on behalf of the partnership for a loss, the claim was denied because the policy had been cancelled without his knowledge. He protested the matter to the State Commissioner of Insurance and was advised by the Commissioner there was nothing the Commissioner could do. The partnership laws and insurance laws of the state did not, in any way, prohibit a partner from cancelling insurance issued to the partnership.

SEN. VAN VALKENBURG had hoped **Mr. Marble** would be present that day in case there had been miscommunication between them. Perhaps he would still show up. He apprised the Committee that he had spoken with **Mr. McGlenn**, who represented the **Independent Insurance Agents in Montana**. There seemed to be a problem in terms of the implementation of the proposed law, particularly from the perspective of insurance carriers. Insurance carriers may not specifically know who were the partners in a particular partnership. Therefore, if a partner they dealt with proposed to cancel a policy, the insurance carrier may not know if a majority of the partnership was in agreement with respect to the cancellation. **Mr. McGlenn** suggested an amendment, which had been

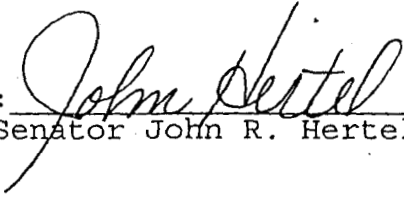
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 3, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 22 (first reading copy -- white), respectfully report that SB 22 be amended as follows and as so amended do pass.

Signed:


Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 5.

Strike: "EXEMPTING"

Insert: "PROVIDING A LIMITED EXEMPTION"

Following: "COVERAGE"

Insert: "FOR"

2. Title, line 6.

Strike: "OR PONY RIDER"

3. Page 2, line 22.

Strike: "or pony rider"

4. Page 2, line 23.

Following: "horseracing"

Insert: "from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey"

-END-


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Sec. of Senate

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MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on March 3, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 216, SB 177, SB 228, SB 238, SB 242,
SB 22, SB 19
Executive Action: SB 177, SB 216, SB 201, SB 238, SB 228

HEARING ON SB 216

Opening Statement by Sponsor:

SEN. TOM BECK, SD 28, Powell County, said this bill was an act establishing continuing education requirements for credit life

stated before a vote. Ms. Wojciechowski said if the members of the Board were in a quorum there could not be a withdrawal.

REP. COCCHIARELLA asked how her conflict of interest was any different than what a horseman's conflict of interest would be. Ms. Wojciechowski said the protection of the public was a main concern.

Closing by Sponsor:

The sponsor closed.

TAPE 2, SIDE B

HEARING ON SB 22

Opening Statement by Sponsor:

SEN. GAGE said this bill was an act providing a limited exemption from workers' compensation coverage for a jockey who is licensed by the Board of Horseracing.

Proponents' Testimony:

Sam Murfitt provided written testimony. EXHIBIT 9

REP. DANIEL FUCHS stated he supported this bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 19

Opening Statement by Sponsor:

SEN. GAGE said this bill was an act including greyhound races as races that may be simulcast under the Board of Horseracing's authority.

Proponents' Testimony:

REP. ELLIS stated he supported this bill and provided an amendment.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-3-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	✓		
Rep. Norm Mills, Vice Chairman, Majority	✓		
Rep. Bob Pavlovich, Vice Chairman, Minority	✓		
Rep. Joe Barnett	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Charles Devaney	✓		
Rep. Jon Ellingson	✓		
Rep. Alvin Ellis, Jr.	✓		
Rep. David Ewer	✓		
Rep. Rose Forbes	✓		
Rep. Jack Herron	✓		
Rep. Bob Keenan	✓		
Rep. Don Larson	✓		
Rep. Rod Marshall	✓		
Rep. Jeanette McKee	✓		
Rep. Karl Ohs	✓		
Rep. Paul Sliter	✓		
Rep. Carley Tuss	✓		

EXHIBIT 7
DATE 3-3-95
HB SB 22

Testimony presented to the House Business and Labor Committee by Sam Murfitt, Executive Secretary of the Montana Board of Horse Racing.

Good morning. My name is Sam Murfitt, I am the Executive Secretary of the Montana Board of Horse Racing and I am appearing before this committee as a proponent of Senate Bill 22. In fact SB22 was proposed by the Board of Horse Racing through the Department of Commerce on behalf of the Horse Racing Industry in Montana.

SB 22 proposes to exempt Jockeys from workers compensation benefits during races as their claim to employee status during the period is without merit. Of 31 horse racing jurisdictions in the United States there are only six that consider Jockeys to be employees and therefore eligible for workers compensation benefits. These states are: New York, New Jersey, Maryland, California, Colorado and Montana. At the present time Colorado in its legislature has legislation similar to this which would exempt jockeys from coverage also. The remaining 4 states are what one would consider to be "major league" in the world of horse racing. Between these state an estimated several thousand race days are contested annually. Purses (the amounts horses are racing to earn) are extremely high and the number of participants (owner/trainer, etc.) is very large. Large indeed when compared to horse racing in Montana where a total of 70 to 80 days of racing are held annually; where purses hoover in the \$600 range,

and not in the \$15,000 to \$20,000 range as they do in these other workers compensation benefit states.

The other 25 racing jurisdiction (states) do not classify jockeys as employees. In these other racing non-workers compensation states, jockeys are insured by the race tracks through purchase of catastrophic insurance policies, medical accident policies and also through the Jockeys Guild which is basically a union for jockeys.

This proposed exemption regarding jockeys has been nationally advertised in various trade journals involving the industry. Copies of various articles have been provided to committee members. Many of these articles quote Mr. John Giovanni the National Director of the Jockeys Guild in which he states that jockeys are not employees. In any event, even after national notification of the proposed exemption, I doubt that this committee has received any testimony from members of this occupational group opposing this change. At least there are none present here today to verbally testify in opposition. Somehow, I find that strange.

When Montana began enforcing its requirement that jockeys were employees, participation in racing by Montanans and non-residents dropped approximately 40%. Wyoming, Idaho, Washington, Oregon, North Dakota and South Dakota do not consider them to be employees and horsemen coming to Montana were given two choices -

3

buy coverage or stay home. Many non-residents chose to stay home and many Montana residents quit the business.

SB 22 will rectify the misclassification of Jockeys riding during races as being employees. Employees of who? The owners, the trainers? It is interesting to note that in filing income tax jockeys list themselves as self employed. Also, approximately 60% of the jockeys riding in Montana are non-residents. At this time I would like to explain how a jockeys services are obtained by an owner or trainer, to better help this committee understand the strange relationship that exists. An individual has a horse he or she wants to enter in a specific race on a specific day. On entry day for this race, the trainer fills out an entry blank and deposits in the race office. On this entry blank are such details such as horses name, age, sex, what race it is entering and the name of the jockey that the trainer desires to ride his horse. At closing of entries, the race office compiles a list of entrants for that race - this is known as the draw. During the draw often times the Jockeys which you want to ride your horse is also named to ride another or several other horses in that same race. At this time the Jockey or his/her agent (yes, agent) decides which horse the Jockeys will ride. Generally speaking this choice will be the one which the Jockey or his agent feels he or she has the best chance to win on. So it is highly possible that you will not have the jockey who you named to ride your horse, ride it and you then have to persuade another Jockey to ride. The Jockey or his/her agent is solely the determinant

of whose horse he/she will ride. The Owner or trainer only lists a name.

If successful or when finally securing the service of a jockey, the owner or trainer has no control whatsoever over the jockey or horse once the race begins. The jockey provides his own riding gear, saddle, goggles, helmet, whip and expertise.

I previously mentioned jockey agents. Many jockeys themselves employ agents to act on their behalf in deciding which horses to ride. In this situation, the owners or trainer doesn't even see the jockey instead they see his/her agent. Employee status, I don't think so.

In any event having jockey properly classified as exempt will not leave them out in the cold. Montana will cover them the same way as the other 25 states. Racing associations will be required to purchase a medical accident policy covering jockeys during races. This will be insured by the Board of Horse Racing not issuing an association racing licenses until proof of purchase of such a policy is shown. Secondly, the jockey will be covered under the National Jockeys Guild policy if they so choose.

An added bonus will also be realized by exempting jockeys from Workers Compensation benefits by the State Fund, all other industry insureds and the horse racing industry itself. Jockeys constitute the heart of the liability issue. Using 1993 as an

example State Fund estimates a liability for the horse racing industry to be \$2,693,035. If one subtracts from this amount the monies spent on jockey injuries during races, the new estimated liability for the industry would be somewhere in the \$150,000 range. Obviously the horse racing industry does not generate a 2 mill annual premium. Where does the extra come from? It comes from all the other industries insured by State Fund. With jockeys being properly classified as exempt the Montana Industries insured (which includes horse racing) will not have to pick up the slack. Their rates will not be a likely to increase as a result and the horse racing industry should be able to enjoy affordable coverage once again, therefore increasing participation.

In closing, I would like to say that the Montana Horse Racing Industry is simply asking this body for the ability to play on a level playing field and to be competitive with other states offering horse racing. Jockeys are not employees of owners and trainers never have and never will be. As a group they constitute the most independent of free spirits. Horsemen are basically at their mercy from a stand point of if they will ride their horse; if they will do their best once the starting gate opens; or even if they will show up to ride once they have consented. You've got to have them, they've got to have you, you can't hire them or fire them. The only thing for certain at this time is that the industry must insure them. I encourage this committee to act favorably on SB22.

GUILD/TRA from page 19

takes an alternate stance.

The TRA says the issue is about responsibilities, or the lack thereof, of businesses to independent contractors. "We have absolutely no legal responsibilities to the jockeys whatsoever," said Tom Meeker, president and chief executive officer of Churchill Downs.

In the TRA view, providing health insurance to jockeys is analogous to homeowners providing the neighborhood plumber with an insurance policy and pension plan. Validating the TRA's argument is that six states had to write specific legislation to cover the riders under workers' compensation programs.

Although a plumber may be in the same employer/employee relationship as a jockey, the person fixing your pipes is very rarely placed in a life-threatening situation. Jockeys are at risk on every mount, and their insurance costs are much higher than other independent contractors.

For that reason, while the tracks actually have no legal obligation to provide the coverage, they have for the past 28 years. "It makes good business sense," said Meeker.

But due to the belief that they are

providing benevolence to the jockeys, TRA maintains racetracks are providing \$1.7-million of insurance coverage for which their obligation is zero, and therefore additional payments are out of the question. The difference in philosophy is worded well in a TRA media advisory: "The Jockeys' Guild members contributed only \$800,000 toward their own health plan, while the remaining \$1,700,000 was subsidized with payments from the tracks."

What about the other \$4.5-million in accident coverage? TRA has traded those funds for the riders' media rights, which is at the center of the continuing controversy. The Guild has come to the conclusion that, with the explosion of simulcasting across the country, their faces and images are worth a lot more than \$4.5-million.

"What are the media rights worth?" asked Bailey rhetorically. "We're putting it at one-tenth of 1% of the national handle. That's probably about \$9-million. But it could be less, it could be more."

TRA has put the cost, at least estimate, at \$11-million, forecasting a national handle of \$11-billion in 1995.

No one really knows what media rights are worth or even what bene-

Getting mandated help from the state

Owners help fund low-cost workers' compensation policies for jockeys in New York, California, New Jersey, Maryland, Colorado, and Montana

by Marianna Haun

THERE are currently six states nationally that cover jockeys under workers' compensation policies, though come January that number may be reduced to five when the Montana Legislature considers eliminating jockeys from that state's program.

According to Albert Goke, president of the Montana division of Horsemen's Benevolent and Protective Association (HBPA), "We are going to attempt in our legislative session that starts in January to exempt jockeys from workers' compensation. We simply feel that jockeys in a race are not employees. During a race they are acting as independent contractors."

"It is our intent to cover exercise riders riding in the morning under workers' compensation continuously. We wouldn't exempt them—only the race riding."

There are no expected changes in the workers' compensation policies of the five other states that cover jockeys—New York, California, New Jersey, Maryland, and Colorado.

In New York, there is good news for owners and trainers who participate in the New York Jockey Injury Compensation Fund (NYJICF). According to Rick Violette, chairman of the board of directors of the NYJICF, there will be a rebate of up to \$250 mailed to all owners and trainers at the end of the year. "We are planning a rebate for somewhere in the neighborhood of \$200 to \$250," Violette said. "We have to wait for year-end figures."

That is not the only good news, Violette said. "Next year, we are going down 20% in our base premium (for owners and trainers). The \$375 premium paid by owners and trainers in 1994 will be \$345 next year. The 1% of purses paid by owners in 1994 will be reduced to eight-tenths of 1% in 1995, and the stall fees at New York Racing Association tracks will go from 50 cents a day in 1994 to 45 cents a day in 1995. At Finger Lakes, the stall fees will be down to 12 cents a day from 15 cents a day."

Under the workers' compensation policy in New York, Violette said, the jockeys and exercise riders are basically covered for any work-related injuries. "The payroll per week (for disabled riders) is currently \$400 in New York state," Violette said. "That is the same for anybody—jockey, taxi driver, whatever. All medical expenses, post-accident therapy, and sometimes even re-education, can be plugged into that. Even with catastrophic injuries, they are covered. So if there was a quadriplegic in New York—he's covered. His bills are paid. In New York, owners and trainers pay between \$1-million to \$1.5-million annually into compensation coverage."

To cover grooms, hotwalkers, and night watchmen, Violette said, trainers have to have their own policy.

EXHIBIT 10
DATE 3-3-95
SB 22

"The exercise riders are the only ones you take out of your payroll and they are covered by the Jockey Injury Fund."

In California, trainers have to purchase a workers' compensation policy from an insurance company. Under California labor laws, jockeys are covered under that policy. According to insurance broker Chris Clark, former president of the California division of HBPA, who insures approximately 400 California trainers, jockeys are "...technically the employee of the owner, but the owner gives coverage for the jockeys by way of the trainer's policy."

and trainer's license fees.

In Maryland, in which the policy is strictly for jockeys riding during races, the 1994 fees were \$150 for both owner and trainer. In 1995, that will drop to \$125 for owner and trainer.

In New Jersey, the annual fee, due January 1, for owners and trainers is \$379. The policy is strictly for on-track and is limited to up to \$100,000 for each occurrence with a \$500,000 limit for each policy, and \$100,000 for each employee. In New Jersey, there will be an attempt next year in the state Legislature to have the workers' compensation fees taken out of purses.

In Colorado, jockeys are covered, along with everybody else on the backside, by a \$25 per start fee. Of that fee, the track pays \$5 per start and the owners pay \$20. According to Skip Sherman, president of Racing Associates of Colorado, Ltd., which operates Arapahoe Park in Aurora, Colorado, the Colorado Horsemen's Association carries the policy. Under an agreement with the Jockeys' Guild, the track applies the \$40,000 fee they were paying the Guild for a jockey's catastrophic policy to the Colorado workers' compensation policy, which affords better coverage for the jockeys.

"There is nothing paid up front—no annual fees—just per start," Sherman said. "If you start two horses, that is your whole contribution for the year. As soon as you come on the grounds, you are basically covered. It covers everybody on the backside—owners, grooms, trainers, jockeys, exercise riders—everybody that's back there."

That situation may change in Montana if the HBPA gets its way. Goke thinks the HBPA will accomplish its goal before the Legislature. "I think we will get it done," Goke said. "Montana's Department of Labor has indicated they will support us, as has Workmen's Compensation."

Under Montana's workers' compensation program, which has no cap, each racehorse owner pays an annual fee of \$100 per horse plus \$15 a mount. Each trainer pays an annual fee of \$150. "We have some side ones, too," Goke said. "We have to pay an extra \$150 a piece for grooms, as well."

Tracks carry catastrophic insurance for the jockeys and pay \$500 per race day. "The catastrophic insurance is bought by the tracks through the Jockeys' Guild," Goke said.

One of the problems with Montana having no cap on its workers' compensation claims, Goke said, is that the Jockeys' Guild's catastrophic policy never gets touched. "That has always bothered us," Goke said. "I don't think they've ever paid any claims in Montana." ☺

Marianna Haun is a staff writer for THOROUGHBREDS TIMES.



KEN DUNN
"...here in Florida we will put the program on."



SHANE SELLERS
"It's time we got what was rightfully coming to us."



RICK VIOLETTE
Chairman of New York Jockey Injury Compensation Fund

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Letters

(continued from page 6422)

about local horse racing news. All horsemen need to be involved in media relations.

Dr. Gerald Farris
Longview, Texas

JOCKEYS: LET THE RICH PAY FOR THE POOR

This is not an easy task, and I don't relish it. I know a lot of jockeys and greatly respect them, their ability and athleticism. I understand the risks they take when riding, and I have great compassion for those injured in their chosen line of work. But there are some things that have to be said, and I haven't seen anyone tell it like it really is...yet!

New York racing is being choked to a slow death and everyone is chipping in, attempting to save the sinking ship—everyone EXCEPT the jockeys. The New York Racing Association is downsizing, the owner's ranks are thinning because virtually all of us lose money (over 90% to the tune of around \$80 million a year in New York alone). The breeders' ranks have been halved due to bankruptcy and the trainers, some of whom work 12 hours a day, seven days a week, are barely making a living. All of us are struggling and yet there is only one group which only takes.

In New York, one of the only state to have this inane law, the owners pay the jockeys' workers' compensation insurance because the jockeys are considered to be our employees—which is really a laugh.

How did this happen? I've heard that late in a legislative session, the jockeys' lobbyist in Albany rammed through this insane, unreal, unreasonable, and totally ludicrous law. This was done in secret without the trainers or owners having the slightest clue, probably because the jockeys knew it was morally and ethically wrong and would have been disputed.

Everyone, especially an owner, knows that jockeys are INDEPENDENT CONTRACTORS and not employees of the owner. Yet each owner contributes a basic fee, about \$400, plus 1% of the entire purse structure in the state of New York comes off our accounts to pay the jockeys' workers' compensation insurance.

One trainer I know contributed around

\$9,000 last year to the fund.

This money leaves the game, never to be churned back by the owners in new horses. This reduces the supply of money, demand, and prices.

And now for the killer: Jockeys' Guild manager John Giovanni recently said in interviews that jockeys are INDEPENDENT CONTRACTORS. There's no argument about that. So why are they our employees in New York? And why are the owners paying their workers' compensation insurance? What have the jockeys done to help alleviate the desperate situation here and around the country where it is estimated that the owners lose about \$1 billion a year?

In most states, the jockeys are considered independent contractors. Hey, I'm an independent small businessman. Jockey agents are small businessmen, independent contractors. Guess what? No one pays my health insurance for me, and no one pays health insurance for jockey agents or millions of other independent contractors. Why do the jockeys want someone else to pay for their insurance?

Ironically, the most vociferous voices in support of others paying their way are the most successful and I assume the most wealthy jockeys. I don't hear much from the journeyman jocks who toil daily at their arduous task and earn very little compensation for it.

That brings me to my most important point, a possible solution to the threatened jockey strike. The main leadership will think I'm nuts and the idea is ridiculous, but think about it: Just don't dismiss it out of hand.

In all facets of our lives in virtually every endeavor, those who are blessed with more ability and have the most earning power have helped the less fortunate. Wouldn't it be an appropriate gesture if the New York and California millionaire riders could help their comrades toiling at Grade C half-milers, putting their lives on the line hundreds of times a year for peanut wages?

It would have been a magnanimous gesture if the jockeys on Breeders' Cup Day, while donning their "47" caps, had said, "I just made \$60,000 in a little over a minute, and I'm going to give 1% or \$600, or .50% or \$300, to an insurance fund for jockeys who are less fortunate than me." I think half the viewing public would have fallen off their collective seats.

So, my proposal to end this jockey stalemate and to finally have the jockeys contribute to our dying game is this: Let all jockeys who get their 10% (most

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Mr. and Mrs. Kenneth Jones Jr., Owners
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SEATTLE SONG TILT UP

owners pay them 10% across the board from all stakes races worth \$50,000 or more contribute .50% or 1% to their insurance fund. The wealthier would be offsetting expenses for the poorer jockeys and before the wealthy ones start screaming, let them remember they're paying about 50% in taxes anyway, so it will cost them only half. Then the jockeys could join in with the rest of us supporting the game we love and we all support.

Isn't it the "American way" for the more fortunate to help those less fortunate?

Giovanni has said that jockeys "are the only people in racing who do not receive benefits out of purses or out of handle." That, of course, is ludicrous. And then he continues by berating the small amount of money given backstretch personnel out of purses. Some jockeys live in million-dollar homes while backstretch people live in third-world hovels and Giovanni is harping on the small benefits they receive. The man has to get his priorities straight.

This letter is being written out of love for the game and respect for the jockeys, not contempt, and a desire for the rank and file to hear some differing opinions, other than those of their leaders who

keep insisting that they're "independent contractors," yet are willing to be "employees" at times. They want it both ways.

*Richard Bonze
Lawrence, N.Y.*

"The Final Turn" column of Dec. 10 (page 6182) by Ronald K. Kirk of the Thoroughbred Owners and Breeders Association was right on target. Mr. Kirk and TOBA should be applauded by horse owners everywhere for having the courage to bluntly state what almost everyone in the industry knows: Jockeys in the past and today continue to play both sides of the fence. Wanting the freedom of independent contractors, they insist on being regarded as employees when it comes time to pay for insurance coverage and other benefits.

As Mr. Kirk states, jockeys do indeed receive a much larger share of racing's limited revenues than they are entitled to. When owners and racetracks are losing money every year and backstretch personnel work for limited wages under difficult working conditions, jockeys should consider themselves exceptionally fortunate to receive as much for a one-minute ride as a trainer who invests

many hours per week on the care of the horse.

Yes, it is a demanding and dangerous profession, but nobody forces any jockey to undertake the risks involved. The cynical and shameful grab for media attention during the Breeders' Cup by wealthy jockeys racing for \$1-million purses which they refuse to share with their less successful brethren, while asking the rest of the industry to foot the bill, was a disgrace.

If the Jockeys' Guild is really interested in helping injured riders, I would respectfully suggest that the winning riders in races with purses of \$50,000 or more contribute one-half of their winnings to a medical/retirement fund for the benefit of all jockeys.

Frankly, there is no reason for a rider to earn the same percentage of a \$1-million purse as they do of a \$5,000 purse, except outmoded tradition from 100 years ago, when there were no million dollar purses. Perhaps it's time for owners to start employing jockeys who will ride for more reasonable rates and take responsibility for their own benefits as all other independent contractors do.

*H. R. Levinsky
Forestville, Calif.*

Obituary

JACK DEMPSEY

Jack Dempsey, who managed prominent California Thoroughbred farms for more than 54 years, died on Dec. 15 at his residence in Los Alamos, Calif. He was 69.

Born in Ireland in 1925, Dempsey began his career with the Bert Kerr Bloodstock Agency. After seven years with Kerr, Dempsey rode and assisted English trainers before relocating to Canada, where he worked for W. R. Conklin for three years.

Dempsey traded cold Canadian air for the sunny clime of Southern California in 1957, when he became associated with Dr. Jack Robbins' Concho Ranch. He later managed Silver Creek Ranch before helping Fletcher Jones establish Westerly Stud Farm, which grew from its initial 40 acres to eventually encompass 4,000 acres. Among the leading California stations standing at Westerly during the period was Promised Land.

Dempsey also managed Fred Sahadi's Cardiff Stud Farm during the tenure of Gummo as California's leading sire.

In the 1970s, Dempsey purchased 20 acres and established his own Longview Stud. The farm was relocated to Solvang in the 1980s to a 128-acre tract, but Dempsey retained his original acreage, where he kept yearlings. Longview raised more than 20 stakes winners since being started by Dempsey, who also operated a bloodstock agency.

Dempsey is survived by his widow, Helen, and a daughter, Marianne, who manages Longview.

MRS. HUMPHREY S. FINNEY

Mrs. Humphrey S. Finney, 83, widow of the late Fasig-Tipton Company chairman, died at her residence near Versailles, Ky., on Dec. 21. A Maryland native, Olive Macey married Humphrey Finney in 1930. The couple initially resided in Maryland, where Humphrey Finney joined Fasig-Tipton as an announcer in 1937, and moved to New York in 1953 after a group led by Finney purchased the company.

The Finneys relocated to Kentucky in 1962. During Humphrey Finney's career, his wife accompanied him on trips to Europe, Australasia, and the Far East. Humphrey Finney died in 1984. The Fasig-Tipton sale pavilion at Saratoga bears Humphrey Finney's name. John M. S. Finney, the couple's son, became Fasig-Tipton president and chief executive officer in 1968. The younger Finney died on June 1 of this year.

Mrs. Finney is survived by daughters Pat and Marge and eight grandchildren. Contributions are suggested to the memorial fund at St. Raphael's Episcopal Church in Lexington, where services for Mrs. Finney were scheduled to be held on Dec. 27, or to the National Wildlife Federation in Washington, D.C.

By Ron Mitchell

Jockeys are independent contractors

As such, jockeys should be responsible for their own insurance in an industry whose revenue is declining

by J. Brian McGrath

THE negotiations between the Thoroughbred Racing Associations (TRA) and the Jockeys' Guild have been difficult, as we are dealing with complex and emotional issues which do not lend themselves to easy solutions. At the crux of the situation are the elements of compensation, coverage, and financial wherewithal.

The threshold questions are threefold: 1) Are the jockeys fairly compensated for their participation in racing? 2) Do racetracks have a responsibility as it relates to accident coverage? 3) Do racetracks have a responsibility in the areas of health and welfare benefits? Each of these must be viewed in the context of the poor financial condition facing racetracks, other industry groups, and our sport overall.

As to the first, we believe that the jockeys receive fair and just compensation. Total payments to jockeys as their share of purses approximate \$60-million, of which \$33-million is derived from simulcasting. Payments made to cover insurance and health benefits by racetracks totaling \$6,244,000 and those made by horsemen in workers' compensation states amounting to \$4.6-million bring the total to nearly \$71-million.

Racetracks across America are operating on paper-slim profit margins at best, and many are experiencing losses. While simulcast revenues have increased, on-track attendance

and total handle have declined over the past three years. Several racetracks have closed, gone bankrupt, or reorganized. From the horsemen's perspective, the Thoroughbred Owners and Breeders Association (TOBA) pointed out at this year's Jockey Club Round Table that horse owners are losing more than \$1-billion annually. In this economic environment, one cannot justify paying jockeys an increased share of a declining business. Their entitlement or need is not greater than the other participants in our industry.

In the area of accident coverage, we do feel a responsibility and have and will continue to address this issue. We have offered to increase accident coverage by 25% and have undertaken an industry-wide study to determine if a national accident plan for both workers' compensation and non-workers' compensation states is feasible and cost-effective. The Guild has argued that our offer is grossly

If anything, the value of media rights over the past several years to this industry has decreased, not increased.

inadequate. This view was expressed without regard to current economic circumstances and recognition that racetracks and other facets of the industry are today reducing coverage for their employees or asking for additional employee participation. It should also be pointed out that, while accident benefits have not increased over the years, this is a direct result of the Guild's preference to channel what is now a \$1.7-million payment from the racetracks to fund its health plan, rather than improved accident coverage.

As to health and welfare benefits, it should be clearly stated that the jockeys are independent contractors. This status brings with it not only opportunities, but also responsibilities. As independent contractors, jockeys are able to offer their professional services to a broad cross section of owners and trainers. At the same time, they are free to establish self-funded benefit accounts and are responsible for funding their own health and welfare plans.

The Guild has argued that payments made by the TRA in this area are in exchange for media rights. Our view is that the jockeys are paid for their participation through purses. Our sport does not generate significant value from its media rights. Today, with the exception of the Triple Crown and the Breeders' Cup, access to broadcast television is achieved by buying time, not in exchange for license fees. If anything, the value of media rights

over the past several years to this industry has decreased, not increased.

In putting forth its case, the Guild has argued that an additional one-tenth of 1% be added to the handle for the benefit of jockeys and that the public would not find this objectionable. Importantly, in dollar terms, we are talking about something approximating \$10-million. Why should the patron be taxed for the benefit of the jockeys? If the customer will not mind, then why not take out additional pieces for other industry groups? It is contrary to well-accepted business principles that the way to increase revenues in a declining business is to raise your price. The jockeys argue that they just feel they deserve more. We do not agree.

The jockeys' contribution to racing is considerable, as is that of all industry groups. As pointed out, racing is facing very difficult financial times and the solution lies in developing ways to increase the overall revenues within the sport. If that development is successful, everyone will benefit.

A strike or boycott would be to the detriment of the sport and all participants. ☺

J. Brian McGrath is commissioner of the Thoroughbred Racing Associations, Inc.



POINT/COUNTERPOINT
JOCKEY STRIKE

Testimony for SB 19 - Greyhound Legislation

Submitted By: Bill Brown

Director, Montana Horse Breeders

**Director, Horseman Benevolent and Protective
Assn.**

Horse racing, agriculture, gambling, simulcast, the Board of Horse Racing and the Legislature come together in a curious way to make up the horse industry. It's important to understand some of the relationships to completely understand the industry.

Horses fit naturally into the agricultural industry as much as sheep, cattle or hogs. They need a large amount of land to be raised on, they need grains and hay to eat and they are selectively bred to produce desired offspring. They are bought and sold but differ from other farm animals in the fact that they are not raised for food but rather for work, pleasure or competition.

The value of the horse is not determined by supply and demand as dictated by the market, but by value of use. For example, a trained rope horse's value is determined by speed, ability and earning potential. The horse may sell for \$1,000 or \$10,000 depending on the buyers belief in the potential of the horse to help him win back his purchase price in the roping arena. It is the same for all competitive type horses, the value is determined by earning potential. For a race horse then his value is based on his earning potential.

At the live race meets earning potential of a horse comes from the purse amounts that he can earn by winning or "placing in the money" in a race. This is where gambling is introduced to the horse industry.

To increase the race purse pari-mutuel wagering was invented and is used in 31 horse racing states. Pari-mutuel simply refers to the method of pooling wagers. However, distribution of money wagered is similar to other forms of gaming. In Montana, for each \$1.00 wagered at the race meet \$.76 to \$.80 is returned to the bettor and \$.20 to \$.24 is taken out and distributed. The amount of the take out varies by the type of wager. The current distribution of the take out is 1% to the Board of Horse Racing, 9 1/2 % to the track for administration and 9 1/2 % to the race purse. For multiple horse wagers the additional take out is split between owners and breeders bonuses.

The sources of money for the race purse includes the 9 1/2 % take-out from the wagers, money from race sponsors, payments made by horseman and the income from simulcasting. Montana, because we have low population compared to other racing states can only produce a limited amount of money for the purse through sponsorships and the amount wagered at the race track. The only bright spot in this income picture for the past several years has been income generated through simulcasting.

Because Montana has some of the lowest race purses in the country it follows that the race tracks have difficulty attracting horses. As pointed out earlier race purses are a direct factor in determining earning potential and value of the horse.

The Board of Horse Racing and the Legislature come into play in the horse industry by virtue of this being a controlled industry because of the tie to gambling. The industry cannot go forth with a simulcast marketing plan without first getting Legislative approval. The industry needs the help of the board and the Legislature because we need to compete to assure that live racing remains a form of recreation in Montana.

To give this bill proper consideration the committee needs to understand what simulcasting is, what SB 19 does and some horse race industry background.

Simulcasting is the sending of a TV signal from a track conducting live racing that is received at a remote site. In Montana this is the same as if you were at that race track viewing a race at an inside TV monitor. Wagering or tote equipment at the Montana remote site is controlled so that all wagering stops when the race starts.

SB 19 allows the simulcast of greyhound races into Montana under the control of the Montana Board of Horse Racing for the purpose of providing an additional source of income for live horse racing.

The issue is a declining number of horses and horseman willing to run at the Montana horse race meets for inadequate race purses.

Montana county fairs and other race meets need to provide increased purse money to horseman so they will run in Montana and assure the continuance of live horse racing in this state. Income generated from offering simulcast greyhound racing will be dedicated to providing increased purse money for live racing.

Keeping live horse racing in Montana keeps several thousand people employed at race meets and on the farms and ranches that break and train horses.

In 1989 simulcast horse racing was introduced into Montana for the purpose of using income generated from that source to enhance race purse money for live racing along with some funding of bonuses for owners and breeders. Owner and breeder awards promote the breeding and racing of a horse in this state. In

addition some income derived from the simulcasting is used to help fund county fair board expenses and the Board of Horse Racing.

In Montana in 1994 we conducted live horse race meets at Helena, Great Falls, Shelby, Missoula, Hamilton, Billings, Miles City and Kalispell. Live races were conducted every weekend from May 1st to September 25th. Simulcast or live TV horse racing from out-of-state tracks was presented every weekend that live racing was not conducted. Simulcast races are held in 10 locations in Montana. Some locations are at county fairgrounds sites and some at taverns and restaurants.

The most important single item that drives live horse racing is the amount of purse that is offered for winning or placing "in the money". To horse owners purse has the same connotation as pay check to a wage earner. Race tracks conduct the live meets and determine what the purse amounts will be based on their estimated costs and estimated revenues. Horsemen look at the purses to determine if they want to run at that race meet or go to another track where purses are higher. The latter choice has been a typical choice in recent years. Montana horsemen would like to race horses in Montana but due to rising costs and reduced purses many have chose to run out-of-state. Typically, Montana horsemen go to Spokane, Yakima, Calgary, and Winnipeg when we don't meet their needs in Montana.

The solution to reversing this trend is to increase revenue or race purses that owners run for so that we are more competitive with out-of-state tracks.

I encourage this committee to give a do pass recommendation to SB 19.

EXHIBIT 12
DATE 3-3-95
HB SB22

Greyhound Legislation - Senate Bill 19

From: Don Bentson, Executive Secretary, Montana Horse Breeders Assn.

Why does the Horse Racing Industry Turn to the Legislature for Help in Solving Financial Problems?

The horse racing industry is a controlled industry in that we operate according to guidelines set in law and rules set by the Mt. Bd. of Horse Racing. The Legislature becomes our "Board of Directors" when restricted activities are contained in the law. The future of Montana live horse racing is dependent on legislation action.

Industry financial problems began several years ago with the passage of laws that allow other forms of legalized gaming in the state such as bingo, keno, video machines and the lottery. Over a period of about 10 years the income to horse racing dropped in half as we were no longer the only legalized gaming in the state. That drop in income would have resulted in the loss of live horse racing except that the Legislature in the 1989 session passed a bill to allow live simulcast wagering on horse racing. This combination of live and simulcast racing brought the income in 1994 back to the 1985 level.

The net income from simulcast horse racing added to that from live racing has helped offset income lost to other forms of gaming. However, revenues from simulcast horse racing produce only about one-half the revenue from the same amount of wagering at live race meets due to the formula used to distribute the simulcast money. For this reason and because expenses have risen dramatically in the past 10 years the trend of owners leaving the business continues. This trend if not reversed will eventually

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result in the loss of live racing to Montana and place an additional burden on the local fairs.

State government and the Legislature appear to strongly back efforts to bring new industry to Montana. We should make just as strong an effort to keep the jobs and the industries we already have.

Proposed Solution

The reason that greyhound simulcast racing is considered as the best source of increased revenue is that it has been tried and operated successfully already in Montana for about three months in 1993. Greyhound racing is well suited to the current Montana simulcast horse racing network because all the equipment used in horse racing can also be used for greyhound racing at no added cost. The greyhound racing provides evening entertainment and seems to attract different fans.

Does passing this legislation result in increased gambling in the state?

In the horse industry we do not consider this legislation to be an increase in gambling. From our point of view we our marketing another from of pari-mutuel wagering. This happens frequently when the lottery introduces new games or the video gaming industry brings out new machines. Our industry needs at least this much flexibility just to hold our market share of the recreation dollar that is spent on gaming.

Greyhound simulcast racing adds some variety to pari-mutuel wagering which we hope will bring back some of the wagering dollars that have been lost to other forms of gaming. This type of

wagering appeals more than horse racing to those who like a little faster action and less handicapping of the animals.

One scenario that is very important for this committee to understand is that it was increased gaming in this state that almost destroyed the Montana live horse racing. Most people in the horse race industry supported bringing more gaming into the state for the same reason that many other people did and that was to avoid the outflow of gambling money to other states. We are currently in that same position with live horse racing such that if we cannot compete with other states we will lose the gaming dollars and the track and ranch jobs associated with live racing.

We believe a marginal increase in wagering if that should occur as a result of this bill is a very small price to pay in comparison to the potential loss of industry jobs and recreational opportunities of thousands of horse race fans across the state.

Does this bill have the full support of the horse race industry?

This bill has the full support of all organizations involved in Montana horse racing including the Montana Horse Breeders, the Horseman's Benevolent and Protective Association, the Montana Simulcast Partners, the Montana Board of Horse Racing, Race track management and the Rocky Mountain Fair Association. We are not aware of any group in the horse race industry that opposes this bill.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 3-3-95

BILL NO. SB22

SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Dave Dennis	Self	✓	
Bill Dennis	"	✓	
Al Hebe	MT. HBPA	✓	
LAY CLARK	MARIAS FAIR	✓	
Janet Veidt	MT MT FAIR Racing	✓	
MAXINE PETERSON	MT. HORSE RACING	X	
Ralph Peterson	MT Horse Racing	X	
BILL BROWN	HBPA & MHBA	X	
Alvin Hunter	Self	X	
Don Bentes	MT Fair Breeding	X	
SATI MURFITT	MONT Bd. of Horseracing	X	
SAM YENOSIAK	WEST. MT. FAIR - MSLA	X	
Cheryl Wilson	COPI	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

DATE 3/3/95

PLEASE PRINT

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 7, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 151, SB 80, SB 392, SB 400,
Executive Action: HB 574, SB 400, SB 80, SB 375, SB 384,
SB 22, SB 242, SB 19, SB 201, SB 38

ability to sue in the courts which has hurt Workers' Compensation.

REP. COCCHIARELLA said because there is a Workers' Compensation system, there is no right to sue. Workers' Compensation provides exclusive remedy.

REP. ELLINGSON said this is not an accurate measure of the earning capacity of the injured individual. If it is to remain in there it cannot be a consideration of the loss of earning capacity.

Vote: A roll call vote was taken and motion failed to adopt the Ewer amendments 8-10 with REPS. SIMON, BARNETT, DEVANEY, ELLIS, FORBES, HERRON, KEENAN, MARSHALL, OHS and SLITER voting no.

Motion/Vote: REP. COCCHIARELLA MOVED THE #1 COCCHIARELLA AMENDMENT. A roll call vote was taken and motion failed to adopt the #1 Cocchiarella amendment 7-11 with REPS. SIMON, MILLS, BARNETT, DEVANEY, ELLIS, FORBES, KEENAN, MARSHALL, MCKEE, OHS and SLITER voting no.

Motion/Vote: REP. COCCHIARELLA MOVED THE #2 COCCHIARELLA AMENDMENT. A roll call vote was taken and the motion failed to adopt the #2 Cocchiarella amendment 5-13 with REPS. SIMON, MILLS, BARNETT, DEVANEY, EWER, FORBES, HERRON, KEENAN, MARSHALL, MCKEE, OHS, SLITER and TUSS voting no.

Motion/Vote: REP. FORBES MOVED SB 375 BE CONCURRED IN AS AMENDED. A roll call vote was taken which passed 12-6 with REPS. PAVLOVICH, COCCHIARELLA, ELLINGSON, EWER, LARSON and TUSS voting no.

EXECUTIVE ACTION ON SB 384

Motion/Vote: REP. SLITER MOVED SB 384 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 22

Motion/Vote: REP. HERRON MOVED SB 22 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 242

Motion: REP. ELLIS MOVED SB 242 BE CONCURRED IN. REP. MCKEE MOVED THE AMENDMENTS.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-7-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		



HOUSE STANDING COMMITTEE REPORT

March 7, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 22** (third reading copy -- blue) **be concurred in.**

Signed: _____


Bruce Simon, Chair

Carried by: Rep. Herron

Committee Vote:
Yes 18, No 0.

531309SC.Hbk

SENATE BILL NO. 22

INTRODUCED BY GAGE

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~EXEMPTING~~ PROVIDING A LIMITED EXEMPTION FROM WORKERS' COMPENSATION COVERAGE FOR A JOCKEY OR PONY RIDER WHO IS LICENSED BY THE BOARD OF HORSERACING; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);
- (e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

1 (f) employment of a direct seller engaged in the sale of consumer products, primarily in the
2 customer's home;

3 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
4 under the laws of the United States;

5 (h) employment of any person performing services in return for aid or sustenance only, except
6 employment of a volunteer under 67-2-105;

7 (i) employment with any railroad engaged in interstate commerce, except that railroad construction
8 work is included in and subject to the provisions of this chapter;

9 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
10 event, unless the person is otherwise employed by a school district;

11 (k) any person performing services as a newspaper carrier or free-lance correspondent if the person
12 performing the services or a parent or guardian of the person performing the services in the case of a minor
13 has acknowledged in writing that the person performing the services and the services are not covered. As
14 used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for
15 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

16 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
17 bundles; but

18 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
19 carries or delivers papers.

20 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

21 (m) a person who is employed by an enrolled tribal member who operates solely within the exterior
22 boundaries of an Indian reservation;

23 (n) employment of a jockey ~~or pony rider~~ performing under a license issued by the board of
24 horseracing FROM THE TIME THE JOCKEY REPORTS TO THE SCALE ROOM PRIOR TO A RACE THROUGH
25 THE TIME THE JOCKEY IS WEIGHED OUT AFTER A RACE IF THE JOCKEY HAS ACKNOWLEDGED IN
26 WRITING, AS A CONDITION OF LICENSING BY THE BOARD OF HORSERACING, THAT THE JOCKEY IS
27 NOT COVERED UNDER THE WORKERS' COMPENSATION ACT WHILE PERFORMING SERVICES AS A
28 JOCKEY.

29 (3) (a) A sole proprietor or a working member of a partnership who represents to the public that
30 the person is an independent contractor shall elect to be bound personally and individually by the provisions

1 of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers'
2 Compensation Act.

3 (b) The application must be made in accordance with the rules adopted by the department. The
4 department may deny the application only if it determines that the applicant is not an independent
5 contractor.

6 (c) When an application is approved by the department, it is conclusive as to the status of an
7 independent contractor and precludes the applicant from obtaining benefits under this chapter.

8 (d) When an election of an exemption is approved by the department, the election remains effective
9 and the independent contractor retains the status as an independent contractor until the independent
10 contractor notifies the department of any change in status and provides a description of present work
11 status.

12 (e) If the department denies the application for exemption, the applicant may contest the denial by
13 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
14 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
15 the procedure established in 39-51-2403 and 39-51-2404.

16 (4) (a) A private corporation shall provide coverage for its officers and other employees under the
17 provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules the department promulgates
18 and subject in all cases to approval by the department, an officer of a private corporation may elect not to
19 be bound as an employee under this chapter by giving a written notice, on a form provided by the
20 department, served in the following manner:

21 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
22 delivering the notice to the board of directors of the employer and to the department; or

23 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
24 delivering the notice to the board of directors of the employer, to the department, and to the insurer.

25 (b) If the employer changes plans or insurers, the officer's previous election is not effective and
26 the officer shall again serve notice as provided if the officer elects not to be bound.

27 (c) The appointment or election of an employee as an officer of a corporation for the purpose of
28 excluding the employee from coverage under this chapter does not entitle the officer to elect not to be
29 bound as an employee under this chapter. In any case, the officer shall sign the notice required by
30 subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202

1 if the officer falsifies the notice.

2 (5) Each employer shall post a sign in the workplace at the locations where notices to employees
3 are normally posted, informing employees about the employer's current provision of workers' compensation
4 insurance. A workplace is any location where an employee performs any work-related act in the course of
5 employment, regardless of whether the location is temporary or permanent, and includes the place of
6 business or property of a third person while the employer has access to or control over the place of
7 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
8 The sign must be provided by the department, distributed through insurers or directly by the department,
9 and posted by employers in accordance with rules adopted by the department. An employer who purposely
10 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

11
12 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

13 -END-